

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ALLEN MILLER,

*Plaintiff,*

v.

HOUSTON POLICE DEPARTMENT, *et al.*,

*Defendants.*

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CIVIL ACTION H-08-2826

**ORDER**

Pending before the Court is plaintiff's "Rule 56(f) Affidavit and Request for Additional Discovery" in this *pro se* section 1983 lawsuit. (Docket Entry No. 130.) Because plaintiff is requesting additional time for discovery in order to respond to defendants' pending motion for summary judgment, the Court liberally construes the motion as seeking relief under Rule 56(d) of the Federal Rules of Civil Procedure. Defendants oppose the motion. (Docket Entry No. 133.)

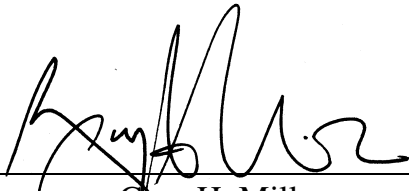
Plaintiff bases his need for a continuance on pending motions for discovery of personnel, internal affairs, and disciplinary files for the individual deputy defendants, and of the State's criminal files in his theft and assault cases. The Court denied these discovery requests under separate order. Plaintiff does not show how discovery of these files would allow him to "present facts essential to justify [his] opposition" to defendants' motion that are not already available to him. FED. R. CIV. P. 59(d). Although plaintiff argues that these files "are relevant to the issues of credibility, motive of deputies, notice to employer, and

ratification by employer,” he fails to show how these issues are relevant to his opposition of the pending motion for summary judgment. *Id.*

Accordingly, plaintiff’s motion for a continuance (Docket Entry No. 130) is DENIED. The motion for summary judgment was filed on July 18, 2011, and plaintiff is no longer incarcerated. Plaintiff’s response to the motion for summary judgment is due SEPTEMBER 12, 2011. The motion for summary judgment will be considered in absence of plaintiff’s response if no response is filed by that date.

The Clerk will provide copies to the parties.

Signed at Houston, Texas on August 29, 2011.



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Gray H. Miller  
United States District Judge